

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Dale Gerken,
Petitioner-Appellant,

v.

Webster County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-94-0087
Parcel No. 14-05-200-003
Docket No. 11-94-0160
Parcel No. 10-22-200-001

On October 7, 2011, the above-captioned appeals came on for consideration before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Dale Gerken (Gerken) requested his appeals be considered without hearings and submitted evidence in support of his petitions. The Board of Review designated Assistant County Attorney Cori Kuhn Coleman as its legal representative. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Gerken appeals from the Webster County Board of Review decision reassessing two agricultural properties in Webster County, Iowa.

Docket 11-94-0087: According to the record, the subject parcel 14-05-200-003 consists 43.59 gross acres/41.56 net acres in Clay Township. The real estate was classified as agricultural on the January 1, 2011, assessment and valued at \$50,260, representing land value only.

Docket 11-94-00160: According to the record, the subject parcel 10-22-200-001 consists 37.86 gross acres/36.81 net acres¹ in Elkhorn Township. The real estate was classified as agricultural on the January 1, 2011, assessment and valued at \$51,560, representing land value only.

Gerken protested to the Board of Review on the single ground that the properties are not assessable, are exempt from taxes or are misclassified under Iowa Code section 441.37(1)(c). He alleged the drainage right-of-ways should not be taxable under section 427.2. The Board of Review denied the petitions.

Gerken then appealed to this Board and reasserted his claims.

Gerken challenges the agricultural land assessments claiming the drainage right-of-ways should be exempt from taxation under section 427.2. He provided a plat map of the parcels showing the open-ditch measurements of each acreage. Section 427.2 applies to property acquired through eminent domain when the property owner surrenders possession to a public authority. When ownership is transferred to the authority to establish an open, public drainage improvement the property is exempt from real estate taxes. Gerken maintains private ownership of the entire subject parcel and has not surrendered possession of a portion of his property to a public authority. Under these facts, section 427.2 does not apply.

Although the drainage right-of-way² is not exempt from taxes, the 65.10 CSR units attributed to it are excluded from the total CSR points used to arrive at the assessment of parcel 10-22-200-001 and 129.66 CSR points are excluded from the total CSR points on parcel 14-05-200-003. For parcel 10-22-200-001, the soil calculation report reduces the 2844.12 total CSR points by the 65.10 CSR points in the drainage area in arriving at the adjusted CSR total of 2779.02. The total adjusted CSR value

¹ One of the documents in the certified record contradicts the soil report in listing the number of gross/net acres for this parcel.

² The soil report for parcel 10-22-200-001 labels the right-of-way a creek (CRK) of 1.05 acres, while the survey designates it as an open ditch of 1.05 acres. The soil report for parcel 14-05-200-003 labels the right-of-way a drainage ditch (DD) of 2.03 acres, while the survey designates it as an open ditch of 2.09 acres. This parcel also has a spot adjustment of 0.26 acres with no CSR points.

(2779.02 units) was then multiplied by the unit price (\$17.942) to calculate the assessed value of \$49,863 of this parcel. For parcel 14-05-200-003, the soil calculation report reduces the 2795.32 total CSR points by the 129.66 CSR points in the drainage area in arriving at the adjusted CSR total of 2665.66. The total adjusted CSR value (2665.66 units) was then multiplied by the unit price (\$17.942) to calculate the assessed value of \$47,827 of this parcel. While this is the value on the Soil Calculation Report, the other file documents indicate \$50,260 assessed value without explanation.

Reviewing all the record as a whole, we find the preponderance of the evidence did not establish the subject properties should be exempt from taxation as of January 1, 2011, however, we find the assessed value of parcel 14-05-200-003 should be revised to reflect the correct assessed value of \$47,827 calculated on the Soil Report.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

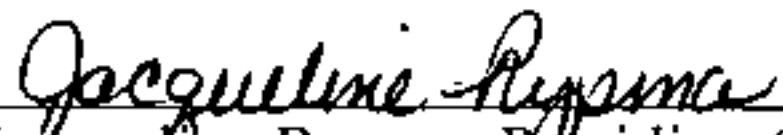
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). Gerken challenges the valuation of agricultural land, which is valued based on its productivity and net earning capacity. § 441.21(1)(e).

In an exemption case, it is appropriate for the Appeal Board to "strictly construe a statute and any doubt about an exemption is resolved in favor of taxation." *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000). While section 427.2 provides for drainage right-of-ways to be tax exempt, the exemption only applies to property acquired by eminent domain by an authority for public use. Ownership of Gerken's drainage right-of-ways has not been transferred to a government authority for public purposes.


Therefore, we affirm the Gerken property assessment of parcel 10-22-200-001 as determined by the Board of Review. The Appeal Board determines that the property assessment value of parcel 14-05-200-003 as of January 1, 2011, should be corrected to reflect an assessment of \$47,827 in land value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of parcel 10-22-200-001 as determined by the Webster County Board of Review is affirmed and the January 1, 2011, assessment of parcel 14-05-200-003 as determined by the Webster County Board of Review is corrected as set forth herein.

Dated this 7 day of December 2011.


Jacqueline Rypma, Presiding Officer

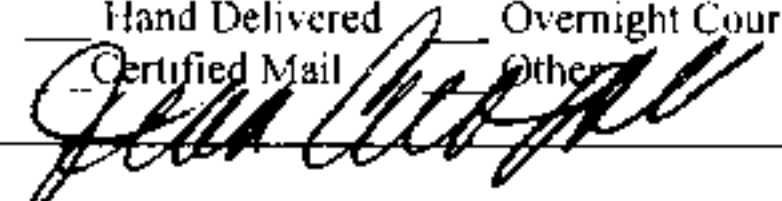

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-7</u> , 201 <u>1</u> . | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
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| Signature |  |